08-01789-cgm Doc 18081-20 Filed 10/17/18 Entered 10/17/18 13:16:40 Exhibit 19 Pg 1 of 8

## **EXHIBIT 19**

	Page 1
1	UNITED STATES BANKRUPTCY COURT
2	SOUTHERN DISTRICT OF NEW YORK
3	x
4	SECURITIES INVESTOR PROTECTION
5	CORPORATION
6	v. CASE NO. 08-01789-smb
7	BERNARD L. MADOFF INVESTMENT
8	SECURITIES, LLC, et al,
9	Debtors.
10	x
11	IRVING H. PICARD, TRUSTEE,
12	Plaintiff,
13	v. CASE NO. 09-01161-smb
14	KINGATE GLOBAL FUND,
15	LTD., et al.,
16	Defendants.
17	x
18	IRVING H. PICARD, TRUSTEE,
19	Plaintiff,
20	v. CASE NO. 10-04946-smb
21	GOLDENBERG,
22	Defendants.
23	x
24	
25	

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Page 2	1
1 U.S. Bankruptcy Court	1 APPEARANCES:
2 One Bowling Green	2 BAKER & HOSTETLER, LLP
3 New York, New York	3 Attorneys for BLMIS, Trustee
4	4 45 Rockefeller Plaza
5 July 26, 2017	5 New York, NY 10111
6 10:09 AM	6
7	7 BY: GERALDINE E. PONTO, ESQ.
8	8 MARSHALL J. MATTERA, ESQ.
9 BEFORE:	9 DAVID J. SHEEHAN, ESQ.
10 HON. STUART M. BERNSTEIN	10 STACEY A. BELL, ESQ.
11 U.S. BANKRUPTCY JUDGE	11 AMANDA E. FEIN, ESQ.
12 FORO, Heidandina	12 (114 177) (4 ) 1   1   1
13 ECRO: Unidentified	13 CHAITMAN, LLP
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17	10 DV. HELEN DAVIG CHAITMAN EGO
18	18 BY: HELEN DAVIS CHAITMAN, ESQ.
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20	20 MCDERMOTT, WILL & EMERY, LLP
21	21 Attorneys for Sage defendants
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24	24
25	25 BY: ANDREW B. KRATENSTEIN, ESQ.
Page 3	Page 5
1 Conference re: Madoff Day 2 Deposition Topics	1 SKADDEN ARPS SLATE MEAGHER & FLOM, LLP
2	2 Attorneys for Tremont
3 Discovery Conference Pursuant to Local Bankruptcy Rule	1
4 7007-1	4 New York, New York 10036
5	5
6 Conference regarding status of factual stipulation in	6 BY: SETH M. SCHWARTZ, ESQ.
7 advance of motions for summary judgment	7
8	8 SCHULTE ROTH & ZABEL, LLP
9	9 Attorneys for Picower Parties
10	10 919 Third Avenue
	11 New York, New York 10022
12	12 DV. MICHAEL WWON ESO
13	13 BY: MICHAEL KWON, ESQ.
14	14
15	15
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24	24
25 Transcribed by: Sherri L. Breach, CERT*D-397	25

Page 40 Page 38 1 for the market making and proprietary. He didn't have a 1 Chaitman is, okay, fine, just where we are here today; that 2 what you can do is look at the 600 and if you come back to 2 separate one for investment and advisory. That was a closed 3 system and no outside world had contact with it. So for him 3 me and you demonstrate to me that there's reason to be had 4 to then negotiate and sell those stocks that were delivered 4 that the trustee should incur the further expense of putting 5 those other tapes together, that's fine. 5 in for -- by that customer, they are going to show up. They 6 -- I don't disagree. They'll show up in DTCC and they'll What I would also suggest in adding to that is 7 that Ms. Chaitman has those 600. She says she wants to go 7 show up in the market making records. Why, because --THE COURT: Have the --8 back and talk to Mr. Madoff. I agree. We should go. We MR. SHEEHAN: -- there's no other place to 9 should go sooner rather than later. And she can utilize 10 negotiate them. 10 that opportunity to also ask him and then there would be THE COURT: Have the DTCC records been produced 11 perhaps even a further record. I submit, anticipate the 11 12 either by DTCC or the trustee? 12 argument that Mr. Madoff will have no knowledge of this as MR. SHEEHAN: Yeah. We produced a number of 13 demonstrated by what he was telling us the last time we were 13 14 down there. His knowledge of the back office, the trades, 14 those. We -- certainly all the ones that we had going back 15 the records and everything is very minimum. And when asked 15 to 1998 included in the reference that we've given to Ms. 16 Chaitman. And I want to be very careful with this date 16 about it he disavows any real knowledge. 17 here. There's a predecessor at DTCC called National 17 So I don't know what we're going to gain, but I'm 18 Securities Career Incorporation, NCSS. We have found 18 more than happy to go down. I'm more than happy to have her 19 records of those. 19 answer. But to suggest today I think -- I think there's no 20 motion pending to be frank. I think Ms. Madoff -- I 20 We believe what those are, just to be very clear 21 here today in court, is that Madoff had access to -- had a 21 apologize again. I've made that mistake before and I do 22 apologize. Is that Ms. Chaitman should put together a 22 printer in his office and he could print that out. So while 23 motion utilizing those 600 and Mr. Kratenstein can add to 23 it is a -- I believe an NCSS record, it is actually printed

Page 39 But in any event, we have produced those records

2 as well. So we believe that there's enough -- more than 3 enough information in the 600 that Ms. Chaitman has, all

24 out in Madoff's office, not delivered by NCSS. I think

4 right, that she should be able to come to Your Honor with a

5 lot more information than she's giving to you now, to 6 justify the expense of taking whether it's 1,281 or 4,500

7 more tapes and putting those together.

25 that's an important distinction.

Now we're going to accommodate her. We -- Your

9 Honor suggested the last time we were here, well, just give

10 her the tapes. And I guess what we could do to make it easy

11 so she doesn't have to have somebody from Iron Mountain

12 watch her or any of that stuff, we could just copy the tapes

13 and give it to her.

14 But I don't know -- and to be candid, and I think

15 Ms. Chaitman would be right if we gave her that we're giving

16 her a pig in the poke because at that point how the heck

17 could she go through 4,500 tapes without them being, you

18 know, digitized and put in a format to -- that can be looked

19 at.

20 So I believe what's before Your Honor today and I

21 think that, you know, especially in light of the Judge Moss

22 history, it's not a failure on our part to comply with two

23 prior orders or with Judge Moss's order. We believe and I

24 believe Judge Moss believed that we have complied with what

25 he asked us to do. And that what he then suggested to Ms.

But I think we've given more than enough to put 2 the onus on them to come to Your Honor with a motion that

24 that. And they've heard what I've had to say today. And I

25 recognize that we've given them a lot of additional data.

3 says, wait a minute, whatever the trustee did here is not

4 enough. I need the rest of those tapes. And I think at

5 that point we can respond again, all right, and I'm not

6 holding anything back here. It's not like I've got more

7 than I can tell Your Honor. We're very comfortable that

8 there's nothing on those 600 nor would there be anything on

9 the 4,500 that will contradict what we're representing and

10 have represented throughout the course of the case, that

11 there was no trading going on on the investment advisory

12 side of the house.

Thank you, Your Honor. 13

14 THE COURT: Okay.

MR. KRATENSTEIN: Your Honor, may I be heard? 15

16 THE COURT: Sure.

17 MR. KRATENSTEIN: Thank you, Your Honor.

Good morning, Your Honor. Andrew Kratenstein of 18

19 McDermott, Will & Emory for the Sage defendants.

20 I want to start by thanking Mr. Sheehan for

21 acknowledging that the Sages did, in fact, deliver stock.

22 That's actually the first time -- to Mr. Madoff. That's

23 actually the first time we've heard that admission. He also

24 just said several things just now that I've never heard

25 before and was very interested to hear. He said that, yes,

Page 41

Page 42 1 they admit that the Sages delivered stock to Mr. Madoff, but 2 they can show that Mr. Madoff liquidated the stock and then 2 large. There's also a public side of this, obviously, what 3 started his scheme. I would love to see that evidence. I haven't seen 4 et cetera. 5 it yet. Maybe it will help, if you show it to me, resolve 6 this case, maybe it won't. I don't know. But I would love

What we have seen, and I attached some of this to 10 my letter back from the last hearing, are documents that 11 appear to show from Mr. Madoff's records and we did try to 12 make the showing to show what we were finding in this

7 to see it sooner rather than later. We certainly haven't

8 found it.

13 microfilm, that (a) stocks were delivered to Mr. Madoff back 14 in the late '70s by my clients. That's now apparently

15 admitted. And that stocks were held according to Mr.

16 Madoff's records at least for some period of time at

17 different banks including National Westminster Bank and

18 MBNA, stocks or other securities including an RCA bond.

And if the trustee has evidence showing that those 19

20 records of Mr. Madoff's are inaccurate and that, in fact,

21 those positions were liquidated before the Sages gave the

22 instructions to liquidate them later in time, I would love

23 to see it. Show it to us as soon as possible and maybe that

24 could help streamline this whole matter.

25 I will note that we do have a defense that 1 action, as Your Honor knows the importance is, is quite

3 happened with Mr. Madoff, what was the scope of the fraud,

Page 44

Page 45

The amount of controversy from my clients at least 6 this case involves their life savings. So that's certainly

7 to them a very high amount of controversy.

In terms of the access to the data, the trustee 9 has all the access. We only have access to what we have

10 been given.

11 Resources, we've already discussed, and the 12 importance of the discovery to resolving the issues in this

13 case, we do think it's very important for the reasons that I

14 just said and also because as Ms. Chaitman eluded to, when

15 the trustee puts forward a \$30 million expert and says,

16 there is no evidence and my case -- their case is based on

17 an absence of evidence of real trading, then it's really

18 incumbent on them to make available to the defendants all of

19 the evidence.

20 And for them to say, well, we have to define what

21 is a trading record and what isn't, as I believe my

22 colleague, Mr. Hutmaker (ph) said at the last hearing to

23 you, what is a trading record and what isn't, what counts

24 and what doesn't, that's for the fact finder. It's not for

25 the trustee to say, well, there's no third party

Page 43

1 regardless of whether the trades actually occurred, the mere

2 fact that the Sages directed the trading is a defense, but

3 put that aside it would also obviously be interesting for us

4 to know if the trades actually occurred or not.

And so we've been trying to figure that out 6 through all of the records that have been produced and it is

7 difficult to do. There are tons and tons of records that

8 have now been produced.

The other thing we can't -- and we just got these 10 pie charts and other charts which, again, I wish I had seen

11 before this morning so that we could study them. But, for

12 example, talking about those cash and securities records

13 that were on that list, we have done our review of those.

14 We think that they're very interesting records. We have

15 only found them at what has been produced for the house 17.

16 We have investment advisory accounts through 1985.

And we -- maybe they exist beyond that and maybe 17

18 they don't. We're curious as to why. That's one of the

19 reasons we think that the production is incomplete. It's

20 unclear to us why there are no post-1985 cash and securities

21 reports for the house 17 account. And we have questions

22 about that.

Turning to proportionality, you know, I will just 23 24 quickly take to the factors here. We have already addressed

25 resources. The importance of the issues at stake in this

1 verification so you should disregard it. That will be for

2 the fact finder to decide what credence to give to Madoff

3 records or other records. And if Mr. Sheehan and his

4 colleagues want to prove that these are fake accounts or

5 dummy accounts or what have you and that they can show us

6 through DTCC or other records that these stock trades never

7 occurred or the stock was liquidated, they'll have every

8 opportunity to do that. But we think we need to see the

9 documents so that we can test their assertions.

10 Thank you, Your Honor.

11 THE COURT: All of the documents, all 4,700 boxes?

12 MR. KRATENSTEIN: Well, now that we've seen this,

13 you know --

THE COURT: What's this? 14

15 MR. KRATENSTEIN: Well, I'm sorry. The records

16 that have been produced it is possible that we may be able

17 to narrow that. We hadn't seen this breakdown that we got

18 until this morning. I was going to come in here this

19 morning and say, yes, because we just got this chart here

20 and for my clients at least, my clients bought and held

21 securities so they were not switched right to begin. The --

22 and the Sages (indiscernible) account they bought and held

23 securities between 1982 approximately and 2007. Okay.

So that's a long period of time and we need the 24

25 records of that entire period of time to see what happened

	Page 46	Page	e 48
1	to those securities, if anything. And, again, if they have	1 looked at the e-data room.	
2	the documents that they say prove beyond a shadow of a doubt	2 But if you recall last May, May 2016, we had	
3	or whatever evidentiary standard you want to apply that they	3 argument on my motion to compel because I made the point	
4	that it didn't occur, or preponderance of the evidence,	4 that a lot of my clients would not have claw back exposure	
5	whatever. Here's the evidence showing that these trades	5 if they were given credit for their profits prior to this	
6	didn't occur, here's the evidence showing what Mr. Sheehan	6 foot strike.	
7	just said that they were liquidated and assumes the stocks,	7 And so I've always been asking for these records.	
8	give it and then show it to us.	8 And as you, I'm sure you remember Ted Jacobs represented to	)
9	THE COURT: Your clients were giving trading	9 the Court that everything had been produced and was the	
10	instructions to Madoff.	10 in the e-data room. And he was bragging about how proud he	;
11	MR. KRATENSTEIN: Yes. In fact, I'll my letter	11 was of how complete the e-data room was.	
12	which was dated July 20 June 26th rather, if you look at	So now of course we realize the e-data room is not	
13	Exhibit C, that's an evidence of one of the instructions.	13 complete and it it's not you know, to say at this	
14	(Pause)	14 point when they've been hiding this evidence for eight	
15	THE COURT: I'm sorry. What tab is that?	15 years, to say that they should just give me the microfilm	
16	·	16 reels when we're talking about this enormous massive	
17	THE COURT: Oh.	17 documents and we don't really know everything that's on	
18	MR. KRATENSTEIN: It's Exhibit C of my June 26th,	18 them. That little label done by the vendor is not	
19	letter.	19 satisfactory to assure us of everything that's on each reel.	
20	(Pause)	20 If I get the microfilm reels, first of all, it's	
21	MR. KRATENSTEIN: I'll	21 not manageable for me. I mean, we're talking about probably	
22	THE COURT: I'm looking for it.	22 15 million pages of documents.	
23	MR. KRATENSTEIN: Yeah.	Number two, the trustee's going to have to put	
24	THE COURT: How frequently did your client give	24 them in a readable, searchable format for himself anyway	
25	trading instructions to Madoff?	25 because he's going to have that expense anyway because how	
	Page 47	Page	e 49
1	MR. KRATENSTEIN: My client gave trading	1 do you they won't be Bate stamped. If I go to trial and	
2	instructions he met with Madoff at least once a year or	2 I have a document what am I going to do? I'm going to say,	
	more. There are more letters like this. There are at least	3 it's from microfilm reel screen number 178, you know, from	
4	a half dozen that we found. He regularly gave trading	4 reel it's not manageable.	
	instructions. It would depend on the time. So they bought	5 In addition to which without it being searchable	
6	securities, as I said, in the early '80s on their	6 when you're talking about 50 million pages of documents it's	
	instructions and there was a buy and hold strategy mostly,	7 as good as saying, you're not entitled to the evidence.	
	but certain positions were changed over time at the	8 THE COURT: You know, I remember going on docum	nent
	direction of the Sages.	9 reviews when I was a young lawyer. We didn't have digitized	Į
10		10 documents. We looked at the documents	
	instructing show up on the customer statements?	11 MS. CHAITMAN: Judge	
12		THE COURT: and made copies of what we wanted.	
13	· · · · · · · · · · · · · · · · · · ·	MS. CHAITMAN: I doubt very much that you had	
	position than the usual investment advisory customer who	14 50 million pages of documents.	
15	•	THE COURT: Actually, I probably did in the	
16	MR. KRATENSTEIN: Yes, Your Honor.	16 MS. CHAITMAN: Okay.	
17		17 THE COURT: first case I did.	
18	-	18 MS. CHAITMAN: And was your adversary someone w	who
19	,	19 had been paid a billion dollars in a case that involves 64	-
20		20 billion and where your adversary made representations for	
	refute everything that Mr. Sheehan said, but I we have	21 eight years that everything had been produced	
	made extensive use of the e-data room. We had no knowledge	22 THE COURT: Okay.	
	that the 400 reels of documents were that were put in the	23 MS. CHAITMAN: and now our hands are going to	
	data room came from the reels. We just looked at the e-data	24 be tied because we don't have the financial wherewithal to	
	room. It didn't say these are reels. But of course we	25 prove how dishonest the trustee has been.	
23	room. It didn't say mese are reefs. But of course we	25 prove now dishonest the trustee has been.	

	Page 50		Page 52
1	THE COURT: All right. Look, I don't have a	1	MS. CHAITMAN: Can I correct that?
2	motion before me. And I think that Sage is a slight is	2	THE COURT: Well, my understanding from what I've
3	in a different position than Ms. Chaitman's clients because	3	heard is that the BLMIS other aspects of the business were
4	they can identify specific instructions and I think you	4	always engaged in actual transactions. They just weren't
5	ought to deal with that issue about whether or not you can	5	allocated to customers. They were for BLMIS. And your
6	produce the corresponding trading records for that day or	6	argument is that they were allocated because there are
7	whatever it is, that it's supposedly shows up on his account	7	corresponding entries in the customer statements where they
8	statements and then he can compare trading records with	8	should have been allocated. Isn't that what you're arguing?
9	account statements.	9	MS. CHAITMAN: There are different arguments.
10	With respect to the 4,700 boxes, you're not going	10	With respect to the treasury, I can match up based on Mr.
11	to convince me to simply force the trustee to turn them	11	Madoff's testimony as to where the treasuries were I can
	over. You're going to have to make a showing through a	12	and he testified that all of those treasuries, I didn't
13	motion or through negotiation.	13	realize it was 16 billion as Mr. Sheehan said. Those were
14	What I would suggest since you're also appear to	14	purchased with 703 account money. Mr. Madoff testified
15	be suspicious about the labeling or not suspicious, dubious	15	THE COURT: Wasn't that just because he was
16	of its accuracy, is pick a small representative example, 20	16	putting the cash into treasury bills to get more interest?
17	reels, digitize them and then you can show me why these are	17	MS. CHAITMAN: No, because he had he had money
18	relevant or how these are relevant. If I look at the sample	18	he held them to term. He held them to maturity. They
19	and you don't show it to me, then you'll have to pay for	19	showed up on customer statements. And they were at Bearn
20	whatever it's going to cost. It's essentially a cost	20	Sterns. They were at Fidelity. They were at Lehman
21	shifting issue and a relevance issue, I suppose.	21	Brothers. They were at Morgan Stanley.
22	That's how I would suggest you deal with it in the	22	But that's an issue post-1992. I'm focusing on
23	short term. but otherwise you can make a motion to compel	23	the 1980s, and what we've already found from the 450 odd
24	discovery. But he's going to come back and say, they're	24	reels that were produced is we can show that the convertible
25	irrelevant, but if you really want to look at them you pay	25	bond trading of our customers was supported by the ownership
	Page 51		Page 53
1	Page 51 for it. And it's going to be the same issue.	1	Page 53 of the securities that their statements showed they had.
1 2		1 2	J
2	for it. And it's going to be the same issue.	1	of the securities that their statements showed they had.
2	for it. And it's going to be the same issue.  MS. CHAITMAN: Then I would suggest, Your Honor,	2 3	of the securities that their statements showed they had.  THE COURT: All right. Well, you can
2 3 4	for it. And it's going to be the same issue.  MS. CHAITMAN: Then I would suggest, Your Honor, that you require the trustee to give me all the microfilm	2 3 4	of the securities that their statements showed they had.  THE COURT: All right. Well, you can  MS. CHAITMAN: But we've only gotten a small
2 3 4	for it. And it's going to be the same issue.  MS. CHAITMAN: Then I would suggest, Your Honor, that you require the trustee to give me all the microfilm and I will go through that process and try to do it myself	2 3 4 5	of the securities that their statements showed they had.  THE COURT: All right. Well, you can MS. CHAITMAN: But we've only gotten a small portion of those. I showed I included those in my
2 3 4 5	for it. And it's going to be the same issue.  MS. CHAITMAN: Then I would suggest, Your Honor, that you require the trustee to give me all the microfilm and I will go through that process and try to do it myself because I don't want to be in a position	2 3 4 5 6 7	of the securities that their statements showed they had.  THE COURT: All right. Well, you can MS. CHAITMAN: But we've only gotten a small portion of those. I showed I included those in my submission to Your Honor before the last I there were NCSS statements which Mr. Sheehan has conceded are legitimate and there were National Bank of North America and
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Page 54	A Page 5
Page 54	Page 50
2 Ms. Chaitman has all of the 1992 tapes, '92 and prior.	2
3 THE COURT: Pre-'92?	3 RULINGS
	4
<b>3</b>	5 IDENTIFICATION PAGE
5 markings on them and the	6 N/A
6 THE COURT: Well, you know	7
7 MR. SHEEHAN: stuff we've found. So	8
8 THE COURT: if she makes a motion for it, you	9
9 just give me an affidavit saying they've all been produced.	
MR. SHEEHAN: All right. Fine, Your Honor.	10
THE COURT: You don't have	11
MR. SHEEHAN: Fine. Okay. I just want	12
13 THE COURT: Because there's no point	13
14 MR. SHEEHAN: to be clear.	14
15 THE COURT: there's no point in arguing back	15
16 and forth about that.	16
17 MR. SHEEHAN: No. I understand.	17
18 THE COURT: Now with respect to Sage, you may be	18
19 able to work out something to get the	19
20 MR. SHEEHAN: We'll actively try that, Your Honor.	20
21 THE COURT: records that correspond to the	21
22 trading directions that were being sent over the years.	22
23 MR. SHEEHAN: Yes, Your Honor.	23
24 THE COURT: It certainly sounds relevant and	24
25 MR. SHEEHAN: No question, Your Honor. And we	25
Page 55	Page 57
1 will do that.	1 CERTIFICATE
2 THE COURT: All right.	2
3 MR. KRATENSTEIN: Thank you, Your Honor.	3 I, Sherri L. Breach, certify that the foregoing
4 THE COURT: All right. And give me the order for	4 transcript is a true and accurate record of the proceedings.
5 the second day. Let's complete that deposition and schedule	5
6 a trial.	6
7 MR. SHEEHAN: Thank you, Your Honor.	7
8 THE COURT: All right. Thank you.	8 Sherri L. Breach
9 (Proceedings concluded at 11:09 a.m.)	9 AAERT Certified Electronic Reporter & Transcriber CERT*D-397
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12	12 DATE: July 27, 2017
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